

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-123597-08

Date:
November 17, 2008

Legend

X =

Trust 1 =

State =

D1 =

D2 =

Dear

This responds to a letter dated May 5, 2008, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting inadvertent ineffective election relief pursuant to § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1. X represents that it timely filed an S corporation election which was intended to be effective on D2.

On D2, Trust's assets included shares of X stock. X represents that Trust was eligible to be an electing small business trust effective D2 and thereafter. However, no election to be to an electing small business trust was filed on behalf of Trust. Therefore, the Trust was not a permissible shareholder, and X's S corporation election was ineffective

In addition, the beneficiary of Trust signed the Form 2553 in an individual capacity, rather than as trustee of Trust. X was not aware of the requirement that the trustee of an ESBT, rather than the beneficiary, must sign the Form 2553.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that X's S corporation election was ineffective on D2 because X had an ineligible shareholder. We also conclude that the election was inadvertently ineffective under § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter, provided that X files a new Form 2553 effective D2 and the trustee of Trust files an ESBT election effective D2, pursuant to the procedures set forth in § 1.1361-1(m)(2), with the appropriate service center within 60 days of the date of this letter, and provided that X's election to be an S corporation was not otherwise ineffective and was not terminated under § 1362(d). A copy of this letter should be attached to the Form 2553 and the ESBT election.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: